?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 28.11.2018

*CORAM
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

+Crl.A.(MD) No.150 of 2011

#Alagusundar
... Appellant

vs.

$The State through
Deputy Superintendent of Police,
Theni, V & A.C.Wing Madurai,
Crime No.6 of 2005. ... Respondent

PRAYER:~ Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the records in C.A.No..... of 2011 and set aside the conviction and sentence imposed by the learned Special Judge, Theni by judgment in Spl.C.No.1 of 2007 dated 12.05.2007.

!For Appellant : Mr.G.Murugesh Kumar

^For Respondent : Mr.M.Chandrasekaran, APP
Vigilance and Anti Corruption

:JUDGMENT
This criminal appeal has been filed to set aside the conviction and sentence passed in Spl.C.No.1 of 2007 by the learned Special Judge, Theni, dated 12.05.2007 against the appellant.

2.The case of the prosecution is that on 19.01.2005, the District Collector, Theni, conducted a camp during a grievance day for issuing patta. On that day, the father of the defacto complainant gave an application for transfer of patta to the District Collector, Theni. Later he was informed him that the patta had been sent to the office of the appellant, who did not give proper answer to the defacto complainant. On 24.05.2005, when he approached the appellant / VAO, the appellant had demanded a sum of Rs.1,000/~ as bribe to transfer the patta.

3.Since P.W2 was not willing to give the bribe amount, he had lodged a complaint before the respondent police on 26.05.2005 at 06.00 p.m. After receiving the complaint, P.W7 / the Inspector of Police, had organized a trap and during the course of which on 27.05.2005 at 12.00 p.m., the appellant demanded and accepted the bribe amount of Rs.1,000/~ from P.W2 at his office and kept the money in his table drawer.

4.After receiving the pre arranged signal from P.W2, P.W.7 went inside the office of the appellant and recovered the money as bribe from the appellant / VAO and conducted the phenolphthalein test and the result was positive. After preferring the mahazar by the the Trap Laying Officer, the money, which was recovered from the appellant was compared with the serial number, which was already noted by them and thereafter, the case has been handed over to the Investigating Officer, P.W8 for investigation.

5.After completing the investigation, P.W8 laid a charge sheet against the appellant / VAO. In order to prove the case of the prosecution, as many as 8 witnesses were examined, 13 documents were marked and also 3 material objects were exhibited. After completion of prosecution evidence when incriminating circumstances culled out from the prosecution witnesses, put before the appellant / accused, the same has been denied as false. On the side of the appellant, no oral and documentary evidence was let in. After completing the trial, the learned trial Judge found the appellant guilty for the offence under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of 1 year and to pay a fine of Rs.500/~ in default, to under go 3 months simple imprisonment, against which, the convict has preferred this appeal before this Court.

6.The learned counsel for the appellant would submit that the Investigating Officer has not properly investigated the matter and he has not recorded the statement of the accused soon after completing the trap proceedings and he has failed to examine the Assistant of the appellant / VAO and non examination of the father of the defacto complainant, in whose name the patta transfer application was given and also the Assistant of the VAO is the competent person to speak about the presence of the appellant in the VAO Office at the time of occurrence are fatal to the case of the prosecution.

7.Further, he would submit that the Sanction Authority has not properly examined the documents and also not applied his mind. Even he has not verified all the records, as to whether the VAO is the competent person to issue patta, that has not been properly examined. The Sanction accorded by P.W1 is not in accordance with law and the same is defective. Therefore, it is also fatal to the case of the prosecution.

8. He would further submit that the complainant, P.W2, asked to issue patta in his name, since the property stands in the name of his father, the appellant did not issue patta in his name without any valid documentary evidence. Therefore, in order to wreck vengeance, he has filed a false complaint against the appellant. Further, the evidence of P.W2, the victim, the evidence of P.W3, the shadow witness, and the evidence of P.W7, the Trap Laying Officer, shows that there are materials contradictions among them and the same have not been explained by the prosecution properly.

9.Further, he would submit that there was one more application received for issuing patta and the appellant has not demanded any amount for issuing patta from that applicant and there is no necessity for demanding money for issuing one patta to the defacto complainant and eight persons have given the

applications in the camp conducted by the District Collector, Theni, and except the defacto complainant all the seven other persons have received their pattas without any complaint. It is also fatal to the case of the prosecution. Further, the appellant / VAO is not a competent person to issue the patta. Only the Thasildar, is the competent person to issue the patta.

10.Further he would submit that there is a material contradiction in the prosecution witness and there is no necessity for demanding money as bribe for issuing patta. Further, he pointed out that once the patta has been transferred from the vendor to the subsequent purchaser, the parties can apply for patta by online and for getting the copy of the patta, there is no necessity to hand over application either to the Thasildar or to the VAO. P.W6, the Thasildar, has clearly stated that they can pay a sum of Rs.20/~ for getting the copy of the patta.

11.Under these circumstances, the events as stated above create suspicion. The prosecution has not properly investigated the matter and the Sanction Authority has not properly applied his mind before according sanction and also in order to wreck vengeance the false complaint has been filed against the appellant / VAO and the Trap Laying Officer has not obtained statement from the appellant immediately after conducting the phenolphthalein test, which also creates suspicion.

12.The learned counsel for the appellant in support of his contention, would rely on the judgment of the Hon-ble Apex Court in the case of State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede reported in (2009) 15 Supreme Court Cases 200 and would submit that the case is fatal to the case of the prosecution and the complaint given by the defacto complainant is also doubtful.

13.In this case, the demand and the acceptance are not proved and there is a material contradiction between the evidence of P.W2 and P.W3. From the conjoint reading of the prosecution evidence and also the evidence of Thasildar, it is seen that the appellant had not demanded any money as bribe for issuing patta in the name of the defacto complainant. Since the property stood in the name of the father of the defacto complainant, he has not examined as to whether he got the patta and all other things. Therefore, the prosecution has failed to proved its case beyond any reasonable doubt. When two views are possible, the view, which is in favour of the accused can be taken into consideration and this Court can extend the benefit of doubt to the appellant / VAO.

14.Per contra, the learned Additional Public Prosecutor would submit that when the father of the defacto complainant purchased the land, in order to get transfer of patta, he made an application before the District Collector, Theni on 19.01.2005, when the camp conducted by the District Collector. Thereafter, the application received by him was sent to the concerned jurisdictional Thasildar. The Thasildar gave a direction to approach the concerned VAO / the appellant. When the defacto complainant approached the the appellant / VAO, the appellant has not given any proper response.

15.Thereafter, on 24.05.2005, the appellant / accused demanded a sum of Rs.1,000/~ to issue a patta. Since the defacto complainant was not willing to give bribe, he approached P.W7 on 26.05.2005 and made a complaint. After receiving the complaint PW7 arranged the trap. As per the instructions given by P.W7, P.W2 went to the office of the accused on 26.05.2005 at about 06.00 clock. After trap, from the evidence of P.Ws.2, 3 and 5, it is seen that the demand and acceptance have been proved by the prosecution. There is no acknowledgment or any receipt to prove that already he issued the patta either to the defacto complainant or to the father of the defacto complainant. Under these circumstances, the prosecution has proved its case beyond any reasonable doubt. The learned Special Judge has rightly appreciated the evidence of the prosecution and convict the accused, which does not warrant interference of this Court.

16. Heard the learned counsel on either side. Records perused.

17. It is the case of the prosecution that on 19.01.2005, the District Collector, Theni, conducted a camp during a grievance day for issuing patta. On that day, the father of the defacto complainant gave an application for transfer of patta to the District Collector, Theni. Since he was not issued the patta, later informed him that the patta had been sent to the office of the appellant, who did not give proper answer to the defacto complainant. On 24.05.2005, when he approached the appellant / VAO, the appellant had demanded a sum of Rs.1,000/~ as bribe to transfer the patta. But, the defacto complainant is not willing to give the bribe amount. Since P.W2 was not willing to give the bribe amount, he had lodged a complaint to the respondent on 26.05.2005. Under Ex.P2 and based on that P.W7 had organized a trap and during the course of which on 27.05.2005, the appellant is said to have demanded and accepted a sum of Rs.1,000/~ from P.W2 at his office and kept the money in his table drawer.

18. After getting prearranged signals from PW2/defacto complainant, PW3 the shadow witness and the trap laying officer went and conducted phenolphthalein test and recovered the money from the appellant. From the evidence of P.W2 to P.W6, the prosecution has proved its case beyond any reasonable doubt. Once demand and acceptance are proved in the manner known to law the Court can draw statutory presumption under Section 20 of P.C.Act. Undisputedly in this case PW2 and PW3 has categorically narrated the events happened during the trap proceedings. There is no reason to discard the evidence of PW3, the independent witness is known as shadow witness one who accompanied with PW2/defacto Complainant. It is for the appellant to rebut the presumption under Section 20 of the Prevention of Corruption Act, 1988. The appellant has stated that there is no demand and already the patta was issued in favour of the father of the defacto complainant, whereas, there is no document to prove the same. The appellant has not rebutted the statutory presumption in the manner known to law either through direct evidence or preponderance of probabilities.

19. In the absence of that, when the prosecution has proved its case, it is for the appellant to prove that already the patta was issued and to wreck vengeance of him the defacto complainant has filed a false complaint.

In this case, the appellant / accused has not proved his defence. No doubt the said legal presumption is rebuttable, it is for the accused to rebut the presumption that the recovered money is not a bribe money.

20. Under these circumstances, on reading of the sanction order, from the evidence of P.W1, considering the other material circumstances of this case, based on the demand made by the appellant and from the evidence of P.Ws., 2, 3 and 6, it is seen that the Sanction Authority has accorded sanction in accordance with law, even assuming that there is no evidence to show investigation officer has not recorded the statement for the appellant, it will not vitiate the case of the prosecution even though they have not examined the father of the victim and also the Assistant of the appellant.

21. In this case, based on the demand made by the appellant from the defacto complainant, there is sufficient evidence to show that the demand, acceptance, the recovery, non examination of the father of the defacto complainant and the Assistant of the appellant, is not fatal to the case of the prosecution. Therefore, this Court finds that the defects in investigation is not fatal to the case of the prosecution. If there is a contradictions between the evidence of the defacto complainant, the shadow witness and the Trap Laying Officer, the contradictions are not the material contradictions and the same will not vitiate the case of the case of the prosecution.

22. The evidence of P.Ws2, 3 and 6 clearly show that the demand, acceptance and also the recovery is proved and also the chemical analysis report states that the result of the phenolphthalein test is positive.

23. Considering the facts and circumstances of the case, in the absence of proving the defence in the manner known to law by the appellant and the judgments referred to by the learned counsel for the appellant are not applicable to the present case on hand.

24. In view of the above, this Court finds that the accused has committed the offence under Section 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. On reading of the entire materials and also the judgment passed by the learned Special Judge, this Court does not find any perversity in the judgment passed by the learned Special Judge and the appeal is liable to be dismissed.

25 .Accordingly, the criminal appeal is dismissed.

To
1.The Special Judge,
Theni.

2.The Deputy Superintendent of Police,
Theni, V & A.C.Wing Madurai.

3.The Section Officer, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.